

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF POLK  
No. 03P-1054

Fred Barnes  
(Landlord), Plaintiff(s),  
vs.  
Gregory & Shelly K. Warnock  
(Tenant), Defendant(s),

(FORCIBLE ENTRY AND UNLAWFUL DETAINER)

FILED  
POLK COUNTY OREGON  
03 Jan 27 PM 12:06  
TRIAL COURT ADMINISTRATOR  
Entered By  
COMPLAINT

Defendant's Social Security Number Gregory Warnock's 544-82-1519

(Optional, not required, information for purposes of identification only.)

I. Defendant(s) (is) (are) in possession of the following premises:

3062 Timothy Dr., NW  
STREET ADDRESS Salem  
Polk COUNTY OR STATE 97304 ZIP

II. Defendant(s) (entered upon the premises with force) (are/is unlawfully holding the premises with force).  
III. Plaintiff(s) (is) (are) entitled to possession of the premises, because:

24-hour notice (personal injury)  10-day or 20-day notice (repeat violation)  
 24-hour notice (substantial damage)  10-day notice (pet violation)  
 48-hour or 24-hour notice (drug or alcohol  
program of recovery violation)  7-day notice (week to week tenancy-cause)  
 24-hour notice (extremely outrageous act)  10-day notice (week to week tenancy)  
 24-hour notice (unlawful occupant)  30-day notice (month to month tenancy)  
 24-hour notice (employee termination)  30-day notice (cause)  
 72-hour notice (nonpayment of rent)  Other notice  
 144-hour notice (nonpayment of rent)  No notice

ATTACH A COPY OF THE NOTICE RELIED ON TO THE COMPLAINT

IV. Plaintiff(s) may be entitled as the prevailing party to recover attorney fees from defendant(s) if plaintiff(s) (obtains) (obtain) legal services to prosecute this action and if defendant(s) (contests) (contest) this action, pursuant to ORS 90.255 and 105.137(3).

Wherefore, plaintiff(s) (prays) (pray) for possession of the premises, costs and disbursements and attorney fees, if applicable, or a prevailing party fee.

STATE OF OREGON )  
County of Polk ) ss

I, FRED BARNES, being first duly sworn depose and say: That I am the plaintiff or agent of plaintiff in the within cause and that the foregoing complaint is true, as I verily believe.

2345 37th Ave NW Salem  
STREET ADDRESS DOB: 6020 CITY  
OPE 97304 503-364 4150  
STATE ZIP TELEPHONE NUMBER

PLAINTIFF OR AGENT SIGNATURE

OSB#

FRED BARNES  
PRINT OR TYPE NAME OF PLAINTIFF OR AGENT

Witness my hand and official seal of said Court this 27th day of January, 2003.

(SEAL)



By

TRIAL COURT ADMINISTRATOR/CLERK/NOTARY

Kleendy

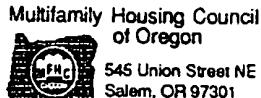
I hereby certify that the foregoing copy of the summons and complaint are true and correct copies of the originals.

(SEAL)

By

TRIAL COURT ADMINISTRATOR/CLERK/NOTARY

EVT #



## NOTICE OF TERMINATION OF TENANCY

FORM  
**6**

DATE: Jan 21 2003 TENANT NAME(S) Gregory L Warrick, et al  
UNIT ADDRESS: 3062 Timothy Dr N.W  
CITY: Salem STATE OREGON ZIP 97304

Pursuant to Oregon Landlord/Tenant law, this is your 30-day notice of the landlord's intent to terminate your tenancy.

This notice has been served personally.

Your rental agreement will terminate at 11:59 pm 2-21-03

or

This notice has been served by first class mail and the effective date is extended by four days including the date mailed.  
Your rental agreement will terminate at 11:59 pm \_\_\_\_\_

OWNER/AGENT: Med Barnes

ADDRESS: P.O. Box 6020 Salem, Oregon 97304

TELEPHONE: 503-364-4150

© MFHC REV. 12/93  
W/R/F

- Distribution: Original - Office; Second Copy - Tenant

Warning: No portion of this form may be reprinted without the written permission of the MFHC.

Pursuant to ORS 90.32, this is to notify you of the following intended entry of your rented house, this is a notice of 24 hours for inspection and maintenance as determined by the landlord. Non more.  
Entry will be made on or after 1-22-03 5PM.

Med Barnes

72-HOUR VACATE NOTICE  
FOR NON-PAYMENT OF RENT

NAME: Gregory L. & Shelly L. Wrenock

ADDRESS: 3062 Timothy Dr. N.W.

CITY: Salem

STATE: OREGON

ZIP: 97304

DATE: 1-22-03 TIME POSTED & MAILED: 7:00 PM OR TIME SERVED AT RESIDENT:

This is to inform you that your rent is now seven (7) days past due. This is your seventy-two (72) hour written notice to pay your rent by 1-25-03 at 7:00 PM or your rental agreement will be terminated as provided by ORS 91.820(2):

If rent is unpaid when due and the tenant fails to pay within 7 days thereafter, the landlord, after 72 hours written notice of nonpayment and his intention to terminate the rental agreement if the rent is not paid within that period, may immediately terminate the rental agreement and take possession in the manner provided in ORS 105.105 to 105.160.

RENT MUST BE PAID WITHIN 72 HOURS AT THE PLACE WHERE THE TENANT NORMALLY MAKES ALL RENTAL PAYMENTS.

RENT DUE \$ 600.00

PLUS

LATE CHARGE \$ 25.00 per day

Fees for service of Notice \$ 100.00

1-22-03 TOTAL \$ 725.00

Carol Barnes

OWNER/AGENT

Norma Barnes

WITNESS OF SERVICE

On 1-26-03 I will file a forcible ENTRY AND UNLAWFUL  
Complaint with Polk County Circuit Court  
FEE for filing EVICTION FED in addition to Court  
filling fees AND ATTORNEY fees is \$ 250.00 + CHARGE  
\$ 50 per hour for all Repairs & maintenance of Tenant -  
CAUSED damages of the house + all the damage  
to the lawn, shrubbery and grounds during your tenancy.  
ANY Questions, please review your Rental AGREEMENT

Carol Barnes  
Norma Barnes

## RETURN OF SERVICE

State of OREGON

County of POLK

Case Number: 03P-1054 Court Date: 2/3/2003

PLAINTIFF:  
**FRED BARNES**

vs.

DEFENDANT:  
**GREGORY L. & SHELLY K. WARNOCK**

POLK COUNTY, OREGON  
FILED  
Circuit Court  
03 JAN 28 AM 10:48  
TRIAL COURT ADMINISTRATOR  
ENTERED BY [Signature]

Received by MALSTROM'S PROCESS SERVING CO. to be served on **GREGORY L. WARNOCK, and SHELLY K. WARNOCK, 3062 Timothy Drive NW, Salem, Oregon 97304**.

I, Patricia S. Bennett, do hereby affirm that on the **27th day of January, 2003 at 5:25 pm**, I:

POSTED a true copy of the **FED Summons and Complaint** to the front door, a conspicuous place on the property described within, pursuant to State Statutes.

I am a competent person over 18 years of age and a resident of the State of Oregon; I am not a party to nor an officer, director or employee of, nor attorney for any party. The entity served by me is the same entity named in the action.

*Patricia S. Bennett*

**Patricia S. Bennett**  
PROCESS SERVER

**MALSTROM'S PROCESS SERVING CO.**  
167 High Street S.E.  
P.O. Box 2031  
Salem, OR 97308-2031  
(503) 585-0234  
Our Job Serial Number: 2003000895

Service Fee: \$25.00



**NOTICE TO DEFENDANT: READ THESE PAPERS CAREFULLY**

NOTE: ORS 105.137. In the case of a dwelling unit to which ORS 90.100 to 90.940 apply:

- (1) If the plaintiff appears and the defendant fails to appear at the first appearance, a default judgment shall be entered against the defendant in favor of the plaintiff for possession of the premises and costs and disbursements.
- (2) If the defendant appears and the plaintiff fails to appear at the first appearance, an order shall be entered dismissing the complaint and awarding costs and disbursements against the plaintiff in favor of the defendant.
- (3) An attorney at law shall be entitled to appear on behalf of any party, but no attorney fees may be awarded if the defendant does not contest the action.
- (4) The plaintiff or an agent of the plaintiff may obtain a continuance of the action for as long as the plaintiff or the agent of the plaintiff deems necessary to obtain the services of an attorney at law.
- (5) If both parties appear in court on the date contained in the summons, the court shall set the matter for trial as soon as practicable, unless the court is advised by the parties that the matter has been settled. The trial shall be scheduled no later than 15 days from the date of such appearance. If the matter is not tried within the 15 day period, and the delay in trial is not attributable to the landlord, the court shall order the defendant to pay rent that is accruing into court, provided the court finds after hearing that entry of such an order is just and equitable.
- (6) The court shall permit an unrepresented defendant to proceed to trial by directing the defendant to file an answer in writing on a form which shall be available from the court clerk, and to serve a copy upon the plaintiff on the same day as first appearance.
- (7) If an unrepresented defendant files an answer as provided in subsection (6) of this section, the answer shall not limit the defenses available to the defendant at trial under ORS 90.100 to 90.940. If such a defendant seeks to assert at trial a defense not fairly raised by the answer, the plaintiff shall be entitled to a reasonable continuance for the purposes of preparing to meet the defense.

03 FEB -3 AM 8:54

TRIAL COURT ADMINISTRATOR  
ENTERED BY *[Signature]*

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF POLK

7 FRED BARNES, ) Case No. 03P-1054  
8 Plaintiff, ) ANSWER AND COUNTERCLAIMS  
9 v. ) (Unlawful and Unreasonable  
10 GREGORY L. WARNOCK ) Lawful Entry and Harassment;  
and SHELLY K. WARNOCK, ) Retaliatory Eviction)  
11 Defendants. ) (Not Subject to Mandatory Arbitration)  
12 \_\_\_\_\_

13 COME NOW DEFENDANTS, Gregory L. Warnock and Shelly K. Warnock  
14 ("Defendant" or "Defendants", whether collectively or individually), by and through his counsel  
15 of record, Monty K. VanderMay and The VanderMay Law Firm, and answers Plaintiff's  
16 Complaint as follows:

17 1.

18 Defendant admits Paragraph 1.

19 2.

20 Defendant denies Paragraphs 2, 3, and 4.

21 FIRST AFFIRMATIVE DEFENSE

22 (Defective Notice)

23 3.

24 The written notices attached to the Complaint were not delivered to or served upon  
25 Defendant in the manner required by ORS 90.155 or the written rental agreement.

## SECOND AFFIRMATIVE DEFENSE

### (Payment of Rent)

4.

Defendant mailed payment for the rent on January 17, 2003. Although problems with delivery delayed Plaintiff's receipt of the rent, this is within the time to cure as provided by ORS 90.400(2)(d).

### THIRD AFFIRMATIVE DEFENSE

### (Estoppel)

5.

10 Plaintiff, through his wife, Nora Barnes, reached an agreement with Defendant on January  
11 24, 2003, in which both parties had agreed that, despite any deficiencies in the manner of  
12 delivery of notice by either party, sufficient notice existed to terminate the tenancy at midnight,  
13 February 21, 2003, and that neither party would take any legal action regarding the timing of the  
14 termination of the tenancy. This agreement was supported by consideration on both sides, to wit:  
15 the parties both agreed that there was no deficiency in any notice provided by either party for the  
16 tenancy to terminate at midnight, February 21, 2003, and both parties further agreed to forego  
17 any litigation related to the timing of the termination of the tenancy.

DEFENDANT FURTHER COMPLAINS and alleges as follows:

6.

At all relevant times, Plaintiff resided with his family in a house located at 3062 Timothy Dr. NW, Salem, Oregon 97304 (“house”), as tenant.

7.

23 At all relevant times, Defendant was the landlord or the landlord's agent of Plaintiff's  
24 home.

25 || //

8.

Plaintiff and Defendant executed a rental agreement on September 16, 2001. This agreement provided that rent, in the amount of \$600, be payable on the first and fifteenth day of each month.

9.

Plaintiff required rent to be paid by sending payment, by mail, to his Post Office Box.

10.

Defendant paid rent by sending a certified check, first class mail, on January 17, 2003.

The envelope was returned, and Defendant immediately re-sent it. Defendant is not in default.

11.

No written agreement, except the rental agreement, gives the landlord the right to enter the house.

12.

The rental agreement provides that the landlord may enter without consent in an emergency, and must provide tenant with post-entry notice of the entry and its purpose. The rental agreement also provides that the landlord may issue a 24-hour notice of entry for necessary inspections and repairs pursuant to ORS 90.322(f). The rental agreement does not otherwise give the landlord the right to enter.

## FIRST COUNTERCLAIM

### (Unlawful and Unreasonable Lawful Entry and Harassment)

13.

Defendant realleges and incorporates Paragraphs 1-12.

14.

During May, 2002, Plaintiff called Defendant during the evening to ask if he could show the house at 11 AM the next day. Defendant gave permission. Plaintiff arrived at 10 AM and let

1 himself, and his clients, into the house. Defendant's son walked out of the shower wearing only  
2 a towel and was seen by Plaintiff and his clients. Plaintiff made a rude comment to Defendant's  
3 son.

4 15.

5 In May, 2002, Plaintiff went to the house three Sundays in a row, without providing  
6 notice, expecting to enter to show the house. The first two occasions, Defendant let him enter,  
7 despite the lack of notice.

8 16.

9 On the third Sunday described in Paragraph 15, after Defendant told Plaintiff that notice  
10 was required before Plaintiff could enter to show the house, Plaintiff became angry and told  
11 Defendant that Plaintiff was going to give a 30-day notice to move.

12 17.

13 In May, 2002, Plaintiff stood outside the bedroom where one of Defendant's sons was  
14 getting dressed. Plaintiff waved and laughed at Defendant's son.

15 18.

16 During Summer, 2002, Plaintiff did yard work, and would use Defendant's trash and yard  
17 debris receptacles, which Defendant paid to have hauled away.

18 19.

19 During Summer, 2002, Defendant told Plaintiff not to water during the day, as Defendant  
20 was watering at night to minimize evaporation. Nonetheless, Plaintiff used Defendant's water to  
21 water the lawn and shrubs located at the house during the heat of the day, causing Defendant's  
22 water bill to increase.

23 20.

24 During Summer, 2002, Plaintiff arrived at the house intoxicated and said to Defendant's  
25 daughter that he was sorry that she looked just like her mother.

1 21.

2 In September, 2002, Defendant advised Plaintiff that he was not to enter the yard to do  
3 yard work without first providing 24 hours notice.

4 22.

5 Plaintiff has entered Defendant's garage, without providing notice, to use Defendant's  
6 yard tools. On one such instance, he took a protective bag from Defendant's snow tires to use as  
7 a yard debris bag, which went to the dump.

8 23.

9 On or about January 18, 2003, Plaintiff went to the house to work in the yard. He told  
10 Defendant's son, Timothy, to pick up his basketball. He raked leaves, some of which had been  
11 deliberately placed as ground cover to protect roots of shrubs, from flowerbeds and placed them  
12 on the front walkway, blocking the front porch. He also left a large pile of leaves in front of the  
13 back patio door, blocking the entry.

14 24.

15 Defendant was having a family gathering on the day described in Paragraph 23, which  
16 was disrupted by the need to clear paths to provide entry to the house.

17 25.

18 In January, 2003, Plaintiff pulled shrubs from the ground and placed them in the  
19 driveway.

20 26.

21 On or about January 18, 2003, Plaintiff arrived at the house unannounced, accompanied  
22 by clients, and asked to show the inside. Defendant explained that the house was not ready to be  
23 shown, and reminded Plaintiff of the need for 24 hour notice before showing the house. Plaintiff  
24 argued with her in front of the other people, causing embarrassment to Defendant.

25 ///

26

1 27.

2 Without providing notice, Plaintiff arrived at the house at or about 9 AM on January 20,  
3 2001, Martin Luther King, Jr., Day. After ringing the doorbell many times, he and another  
4 person began raking leaves. At or about 10 AM, Plaintiff rang the doorbell again and, when  
5 Defendant answered the door and mentioned the need for notice before Plaintiff entered the  
6 premises, yelled at Defendant. Defendant told Plaintiff that he intended to terminate the tenancy,  
7 whereupon Plaintiff yelled at Defendant. When asked to leave, Plaintiff yelled at Defendant  
8 again.

9 28.

10 Plaintiff has maintained a lockbox on the premises of the house for the purpose of  
11 showing the house.

12 29.

13 By letter dated January 22, 2003, Defendant instructed Plaintiff to remove the lockbox.

14 30.

15 Plaintiff has not removed the lockbox.

16 31.

17 The events of Paragraphs 13-31 constitute unlawful entries, unreasonable lawful entries,  
18 and repeated demands for entry that have had the effect of unreasonably harassing Defendant.

19 32.

20 As a result of the unlawful entries, unreasonable lawful entries, and harassment,  
21 Defendant has been damaged in an amount to be proven at trial but not less than the statutory  
22 minimum set by ORS 90.322(8) at one month's rent, which is \$1200.

23 33.

24 As a result of the unlawful entries, unreasonable lawful entries, and harassment,  
25 Defendant has had to incur costs and attorney fees.

## SECOND CLAIM FOR RELIEF

### (Retaliatory Eviction)

34.

Defendant realleges and incorporates Paragraphs 1-12 and 14-33.

35.

Plaintiff provided his notices of eviction in retaliation for Defendants' insistence that

7 Plaintiff provide notice before going to the house to do yard work or show the house and  
8 Defendant's notice that he was going to move out.

36.

10 As a result of the retaliatory eviction, Defendant has been damaged in an amount to be  
11 proven at trial and is entitled to a statutory minimum recovery, set by ORS 90.375 and ORS  
12 90.385, of \$2400, which is two months' rent.

37.

As a result of the retaliatory eviction, Defendant has had to incur costs and attorney fees.

15       **WHEREFORE**, Defendants, Gregory L. Warnock and Shelly K. Warnock, pray for a  
16 judgment against Defendant as follows:

- (a) An injunction requiring Plaintiff to immediately remove the lockbox and prohibiting Defendant or his agents from entering the house or its premises, except as explicitly allowed by law, during Plaintiff's tenancy at the house;
- (b) Actual damages to be proven at trial, but not less than \$3600; and
- (c) Plaintiff's costs and disbursements incurred herein.

DATED this the 3<sup>rd</sup> day of February, 2003.

Ian T. Brown, OSB # 01215  
The VanderMay Law Firm  
of Attorneys for Plaintiff

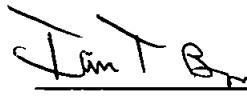
1 Barnes v. Warnock  
2 Polk County Case No. 03P 1054  
3  
4  
5

6 CERTIFICATE OF SERVICE  
7  
8

9 I do hereby certify that I have served the foregoing ANSWER AND COUNTERCLAIM  
10 on February 3, 2003, by causing a true and correct copy to be hand-delivered to the party listed  
11 below at the Polk County Courthouse:

12 Fred Barnes  
13 PO Box 6020  
14 Salem, Oregon 97304

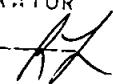
15 DATED this the 3<sup>rd</sup> day of February, 2003.

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18 Ian T. Brown, OSB #01215  
19 The VanderMay Law Firm  
20 of Attorneys for Defendants  
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FILED  
POLK COUNTY OREGON

03 FEB - 7 PM 4:20

TRIAL COURT ADMINISTRATOR  
ENTERED BY 

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF POLK

FRED BARNES, ) Case No. 03P-1054  
Plaintiff, ) DEFENDANTS' FIRST AMENDED  
v. ) ANSWER AND COUNTERCLAIMS  
GREGORY L. WARNOCK ) (Unlawful and Unreasonable  
and SHELLY K. WARNOCK, ) Lawful Entry and Harassment;  
Defendants. ) Retaliatory Eviction)  
\_\_\_\_\_) (Not Subject to Mandatory Arbitration)

COME NOW DEFENDANTS, Gregory L. Warnock and Shelly K. Warnock  
("Defendant" or "Defendants", whether collectively or individually), by and through his counsel  
of record, Ian T. Brown and The VanderMay Law Firm, and answers Plaintiff's Complaint as  
follows:

1.

Defendant admits Paragraph 1.

2.

Defendant denies Paragraphs 2, 3, and 4.

///

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1 DEFENDANTS' FIRST AMENDED  
ANSWER AND COUNTERCLAIMS

The VanderMay Law Firm  
698 12<sup>th</sup> St., S.E., Ste. 240  
Salem, Oregon 97301  
(503) 588-8053

## FIRST AFFIRMATIVE DEFENSE

**(Defective Service of Notice)**

3.

The written notices attached to the Complaint were not delivered to or served upon Defendant in the manner required by ORS 90.155 or the written rental agreement.

## SECOND AFFIRMATIVE DEFENSE

**(Payment of Rent)**

4.

9 Defendant mailed payment for the rent on January 17, 2003. Although problems with  
10 delivery delayed Plaintiff's receipt of the rent, this is within the time to cure as provided by ORS  
11 90.400(2)(d).

### THIRD AFFIRMATIVE DEFENSE

(Estoppel)

5.

15 Plaintiff, through his wife, Nora Barnes, reached an agreement with Defendant on  
16 January 24, 2003, in which both parties had agreed that, despite any deficiencies in the manner of  
17 delivery of notice by either party, sufficient notice existed to terminate the tenancy at midnight,  
18 February 21, 2003, and that neither party would take any legal action regarding the timing of the  
19 termination of the tenancy. This agreement was supported by consideration on both sides, to wit:  
20 the parties both agreed that there was no deficiency in any notice provided by either party for the  
21 tenancy to terminate at midnight, February 21, 2003, and both parties further agreed to forego  
22 any litigation related to the timing of the termination of the tenancy.

#### FOURTH AFFIRMATIVE DEFENSE

### (Excessive and Unreasonable Fees and Late Rent Charges)

6.

26 The fees charged by Plaintiff for Defendant's late payment of rent, for serving notice, and

2 DEFENDANTS' FIRST AMENDED  
ANSWER AND COUNTERCLAIMS

1 for filing his FED action are unreasonable and excessive under ORS 90.260 and 90.302

2 DEFENDANT FURTHER COMPLAINS and alleges as follows:

3 7.

4 At all relevant times, Defendant resided with his family in a house located at 3062  
5 Timothy Dr. NW, Salem, Oregon 97304 ("house"), as tenant.

6 8.

7 At all relevant times, Plaintiff was the landlord or the landlord's agent of Defendants'  
8 home.

9 9.

10 Plaintiff and Defendant executed a rental agreement on September 16, 2001. This  
11 agreement provided that rent, in the amount of \$600, be payable on the first and fifteenth day of  
12 each month.

13 10.

14 Plaintiff required rent to be paid by sending payment, by mail, to his Post Office Box.

15 11.

16 Defendant paid rent by sending a certified check, first class mail, on January 17, 2003.  
17 The envelope was returned, and Defendant immediately re-sent it. Defendant is not in default.

18 12.

19 No written agreement, except the rental agreement, gives the landlord the right to enter  
20 the house.

21 13.

22 The rental agreement provides that the landlord may enter without consent in an  
23 emergency, and must provide tenant with post-entry notice of the entry and its purpose. The  
24 rental agreement also provides that the landlord may issue a 24-hour notice of entry for necessary  
25 inspections and repairs pursuant to ORS 90.322(f). The rental agreement does not otherwise give  
26 the landlord the right to enter.

3 DEFENDANTS' FIRST AMENDED  
ANSWER AND COUNTERCLAIMS

The VanderMay Law Firm  
698 12<sup>th</sup> St., S.E., Ste. 240  
Salem, Oregon 97301  
(503) 588-8053

## FIRST COUNTERCLAIM

### (Unlawful and Unreasonable Lawful Entry and Harassment)

14.

Defendant realleges and incorporates Paragraphs 1-13.

15.

During May, 2002, Plaintiff called Defendant during the evening to ask if he could show the house at 11 AM the next day. Defendant gave permission. Plaintiff arrived at 10 AM and let himself, and his clients, into the house. Defendant's son walked out of the shower wearing only a towel and was seen by Plaintiff and his clients. Plaintiff made a rude comment to Defendant's son.

16.

In May, 2002, Plaintiff went to the house three Sundays in a row, without providing notice, expecting to enter to show the house. The first two occasions, Defendant let him enter, despite the lack of notice.

17.

On the third Sunday described in Paragraph 16, after Defendant told Plaintiff that notice was required before Plaintiff could enter to show the house, Plaintiff became angry and told Defendant that Plaintiff was going to give a 30-day notice to move.

18.

In May, 2002, Plaintiff stood outside the bedroom where one of Defendant's sons was getting dressed. Plaintiff waved and laughed at Defendant's son.

19.

During Summer, 2002, Plaintiff did yard work, and would use Defendant's trash and yard debris receptacles, which Defendant paid to have hauled away.

111

111

1 20.

2 During Summer, 2002, Defendant told Plaintiff not to water during the day, as Defendant  
3 was watering at night to minimize evaporation. Nonetheless, Plaintiff used Defendant's water to  
4 water the lawn and shrubs located at the house during the heat of the day, causing Defendant's  
5 water bill to increase.

6 21.

7 During Summer, 2002, Plaintiff arrived at the house intoxicated and said to Defendant's  
8 daughter that he was sorry that she looked just like her mother.

9 22.

10 In September, 2002, Defendant advised Plaintiff that he was not to enter the yard to do  
11 yard work without first providing 24 hours notice.

12 23.

13 Plaintiff has entered Defendant's garage, without providing notice, to use Defendant's  
14 yard tools. On one such instance, he took a protective bag from Defendant's snow tires to use as  
15 a yard debris bag, which went to the dump.

16 24.

17 On or about January 18, 2003, Plaintiff went to the house to work in the yard. He told  
18 Defendant's son, Timothy, to pick up his basketball. He raked leaves, some of which had been  
19 deliberately placed as ground cover to protect roots of shrubs, from flowerbeds and placed them  
20 on the front walkway, blocking the front porch. He also left a large pile of leaves in front of the  
21 back patio door, blocking the entry.

22 25.

23 Defendant was having a family gathering on the day described in Paragraph 24, which  
24 was disrupted by the need to clear paths to provide entry to the house.

25 26.

26 In January, 2003, Plaintiff pulled shrubs from the ground and placed them in the

1 driveway.

2 27.

3 On or about January 18, 2003, Plaintiff arrived at the house unannounced, accompanied  
4 by clients, and asked to show the inside. Defendant explained that the house was not ready to be  
5 shown, and reminded Plaintiff of the need for 24 hour notice before showing the house. Plaintiff  
6 argued with her in front of the other people, causing embarrassment to Defendant.

7 28.

8 Without providing notice, Plaintiff arrived at the house at or about 9 AM on January 20,  
9 2003, Martin Luther King, Jr., Day. After ringing the doorbell many times, he and another  
10 person began raking leaves. At or about 10 AM, Plaintiff rang the doorbell again and, when  
11 Defendant answered the door and mentioned the need for notice before Plaintiff entered the  
12 premises, yelled at Defendant. Defendant told Plaintiff that he intended to terminate the tenancy,  
13 whereupon Plaintiff yelled at Defendant. When asked to leave, Plaintiff yelled at Defendant  
14 again.

15 29.

16 Plaintiff has maintained a lockbox on the premises of the house for the purpose of  
17 showing the house.

18 30.

19 By letter dated January 22, 2003, Defendant instructed Plaintiff to remove the lockbox.

20 31.

21 Plaintiff has not removed the lockbox.

22 32.

23 On February 3, 2003, Plaintiff submitted a 24-hour notice to inspect to Defendant,  
24 through his attorney. When informed that permission to enter was denied, Plaintiff said "put it in  
25 writing" rather than accepting Defendant's actual notice that permission to inspect was denied.

26 ///

6 DEFENDANTS' FIRST AMENDED  
ANSWER AND COUNTERCLAIMS

The VanderMay Law Firm  
698 12<sup>th</sup> St., S.E., Ste. 240  
Salem, Oregon 97301  
(503) 588-8053

33.

The events of Paragraphs 15-32 constitute unlawful entries, unreasonable lawful entries, and repeated demands for entry that have had the effect of unreasonably harassing Defendant.

34.

As a result of the unlawful entries, unreasonable lawful entries, and harassment, Defendant has been damaged in an amount to be proven at trial but not less than the statutory minimum set by ORS 90.322(8) at one month's rent, which is \$1200.

35.

As a result of the unlawful entries, unreasonable lawful entries, and harassment, Defendant has had to incur costs and attorney fees.

## SECOND CLAIM FOR RELIEF

### (Retaliatory Eviction)

36.

Defendant realleges and incorporates Paragraphs 1-13 and 15-35.

37.

Plaintiff provided his notices of eviction in retaliation for Defendants' insistence that Plaintiff provide notice before going to the house to do yard work or show the house and Defendant's notice that he was going to move out.

38.

As a result of the retaliatory eviction, Defendant has been damaged in an amount to be proven at trial and is entitled to a statutory recovery, set by ORS 90.375 and ORS 90.385, of \$2400, which is two months' rent.

39.

As a result of the retaliatory eviction, Defendant has had to incur costs and attorney fees.

**WHEREFORE**, Defendants, Gregory L. Warnock and Shelly K. Warnock, pray for a judgment against Plaintiff as follows:

- (a) An injunction requiring Plaintiff to immediately remove the lockbox and prohibiting Plaintiff or his agents from entering the house or its premises, except as explicitly allowed by law, during Defendants' tenancy at the house;
- (b) Actual damages to be proven at trial, but not less than \$3600; and
- (c) Defendants' costs and disbursements incurred herein.

DATED this the 14<sup>th</sup> day of February, 2003.

Ian T. Brown

Ian T. Brown, OSB # 01215  
The VanderMay Law Firm  
of Attorneys for Defendants

1 Barnes v. Warnock  
2 Polk County Case No. 03P1054

3 CERTIFICATE OF SERVICE - MAILING

4 I do hereby certify that a copy of DEFENDANTS' FIRST AMENDED ANSWER AND  
5 COUNTERCLAIMS was served upon the following persons or agencies on February 7, 2003,  
6 by causing true and correct copies to be faxed to the last-known facsimile number to the party  
7 listed below and mailed in a sealed envelope, postage prepaid, to be deposited in the U.S. Mail in  
8 Salem, Oregon, to:

9 Norman F. Webb  
10 Webb, Martinis & Hill  
11 1114 12<sup>th</sup> Street SE  
Salem, OR 97302  
(503) 363-2250

12 DATED this the 7 day of February, 2003.

*Tim T. Brown*

13  
14 Ian T. Brown OSB #01215  
15 The VanderMay Law Firm  
of Attorneys for Defendants

FILED  
POLK COUNTY OREGON

03 FEB - 7 PH 4:20

TRIAL COURT ADMINISTRATOR  
ENTERED BY \_\_\_\_\_

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF POLK

FRED BARNES, ) Case No. 03P-1054  
Plaintiff, )  
v. ) DEFENDANTS' TRIAL  
GREGORY L. WARNOCK ) MEMORANDUM  
and SHELLY K. WARNOCK, )  
Defendants. )

COMES NOW Defendants, Gregory L. Warnock and Shelly K. Warnock, (“Defendant” or “Defendants,” whether collectively or individually), by and through their counsel of record, Ian T. Brown and The VanderMay Law Firm, and submits this trial memorandum.

### Factual Background

18 On September 16, 2001, Gregory and Shelly Warnock signed a rental agreement with  
19 Fred Barnes for the house located at 3062 Timothy Drive NW, Salem, Polk County, Oregon  
20 97304 (the “house”). The total monthly rent due was \$1,200 per month, which was payable in  
21 two installments of \$600 due on the first and the fifteenth of each month. The rental agreement  
22 provides for a late fee of \$25 a day, fee for service of notice for violation of the rental agreement  
23 of \$50 a day, and a fee for filing FED eviction action of \$250. A \$500 non-refundable clean-up  
24 fee was also required and Plaintiff also holds a \$5,000 note as a security deposit. The rental  
25 agreement provides that the landlord may enter without consent in an emergency or may issue a

1 24 hour notice of entry for necessary inspection or repairs pursuant to 90.322(f) and that tenant  
2 shall not unreasonably withhold consent to the landlord to enter the premises to inspect, to make  
3 necessary or agreed repairs, decorations, alterations or improvements or to show the unit to  
4 prospective tenants or purchasers. No other written agreement allows Plaintiff the right to enter  
5 the premises. The rental agreement also provided that notices shall be either actual or written, as  
6 provided by law, and that written notices from the landlord to the tenant may be served first class  
7 mail and attachment to the main entrance of the portion of the premises to which the tenant has  
8 possession.

9 Plaintiff required the Warnocks to pay rent by sending an immediately clearable check to  
10 his post office box.

11 Plaintiff has frequently gone to the house expecting to show it to clients. In May of 2002,  
12 Plaintiff went to the house three Sundays in a row, expecting to enter and show the house. On  
13 the first two occasions, the Warnocks let him enter. On the third, Mr. Warnock told Plaintiff that  
14 notice was required before he could show the house. Plaintiff became angry at the suggestion  
15 that he could not just arrive and expect to be let in anytime he wanted. He told Mr. Warnock that  
16 he was going to provide a 30 day notice to move. When Defendants began packing their  
17 belongings, Plaintiff came to the house asking them to stay because he needed the monthly rent  
18 and because they kept the house much cleaner than when he lived there.

19 On one occasion that June, Plaintiff called Mr. Warnock during the evening to ask if he  
20 could show the house at 11:00 a.m. the next day. Mr. Warnock did give permission. Plaintiff  
21 arrived at 10:00 a.m. and let himself and his clients into the house. One of Defendants' children  
22 walked out of the shower wearing only a towel and was seen by Plaintiff and his clients. Plaintiff  
23 made a rude comment rather than attempting to excuse himself. The next week, Plaintiff waved  
24 at that son, who was getting dressed, through his bedroom window. Mr. Warnock told Plaintiff  
25 that he would need to give notice before coming on the property, after which Plaintiff called Mr.  
26

1 Warnock and expressed distress at not being welcomed without notice.

2 During that summer Plaintiff frequently entered the premises without providing written  
3 notice. He claimed that he needed to do yard work that the Warnocks were not doing. He  
4 persisted in that despite the Warnocks' protestations that they were watering and doing some  
5 yard work. Mr. Warnock explained that he was watering the lawn during the evening when the  
6 water would not evaporate, but Plaintiff would use Defendants' hoses and water in order to water  
7 during the day. Plaintiff would use Defendants' trash and yard debris receptacles.

8 Often when Plaintiff would go to the house he would be intoxicated, smelling of alcohol.  
9 On one such instance, he told Defendants' daughter that he was sorry that she looked just like her  
10 mother. Plaintiff has used Defendants' tools without asking. He has entered Defendants' garage  
11 without asking. He has done yard work and left the yard in a mess with the hoses strewn about,  
12 with shrubs uprooted and with large piles of leaves in inconvenient locations. On January 18,  
13 Plaintiff used leaves to obstruct access to the house. He has given the Warnock children  
14 unwelcome instruction.

15 On January 18<sup>th</sup>, Plaintiff arrived unannounced and accompanied by clients, asking to  
16 show the house. Mrs. Warnock explained that the house was not ready to be shown and  
17 reminded Plaintiff of the need for a 24 hour notice before showing the house. Plaintiff argued  
18 with her, telling her that she should have had the house ready to be shown. On Martin Luther  
19 King, Jr., day, Plaintiff arrived unannounced to do yard work at 9:00 a.m., when Defendants'  
20 family was asleep. Plaintiff rang the doorbell and did yard work. He rang the doorbell again, an  
21 hour later. When Mr. Warnock answered the door, Plaintiff, who had been drinking, yelled at  
22 him. Mr. Warnock told Plaintiff that he was going to move, and Plaintiff resumed yelling. On  
23 January 21<sup>st</sup>, Plaintiff affixed a document purporting to be a 30-day notice of termination of  
24 tenancy, and a notice of entry for inspection and maintenance, to the front door of the house. A  
25 box attesting that the notice had been served personally was checked. That day, Mr. Warnock  
26

1 delivered a written notice to move out to Plaintiff via first-class mail. On January 22<sup>nd</sup>, a notice  
2 purporting to terminate the tenancy in 72 hours was affixed to the house's front door. Neither  
3 notice was delivered to Defendant by first class mail.

4 On the morning of the first appearance in this case, Plaintiff delivered another 24-hour  
5 notice to inspect. Upon hearing a verbal denial of consent, Plaintiff's response was that  
6 Defendant needed to put the denial in writing.

7 Legal Argument

8 A. Defective Service of Notice.

9 The rental agreement comports with Oregon law in requiring that written notice be served  
10 either by personal service, by first class mail, or by a combination of affixing the notice to the  
11 front door of a tenant's residence and delivery by first class mail. Under ORS 90.155, no other  
12 method of service of written notice is legal. Plaintiff's notices purporting to end the tenancy  
13 were affixed to Defendants' front door but neither notice was mailed first class. In fact,  
14 Plaintiff's first notice purported to have been delivered via personal service.

15 Plaintiff did mail the second notice on January 23<sup>rd</sup>. There are two reasons why this is  
16 insufficient to provide the "nail and mail" notice permitted by the rental agreement and ORS  
17 90.155. The first reason is that it was sent via certified mail. Because certified can be unclaimed  
18 and because certified mail is slower, certified mail is not a permitted way to deliver notice to a  
19 tenant. Second, the certified mail was not sent the day the second notice was posted on  
20 Defendants' front door.

21 B. Payment of Rent

22 Defendant mailed a check totaling \$600, the amount required for rent on the mid-month  
23 payment, on January 17, 2003. ORS 90.400(2)(d) provides that if rent is mailed within the  
24 period specified in a notice, in this case by January 25, 2003, the rent is considered timely.  
25 Furthermore, Plaintiff was aware that the rent was in the mail. Due to delivery problems, the  
26

1 check was returned to Defendant. Because Defendant was in the process of moving, he had  
2 submitted a change of address and was receiving his mail at a post office box. Because of that  
3 change of address, he did not receive the check until January 31, 2003. The check, still in the  
4 envelope bearing the January 17<sup>th</sup> postmark, was remailed to Mr. Barnes on January 31, 2003.  
5 While the rent payment certainly took longer than usual to get to Plaintiff, it was mailed timely  
6 and Plaintiff was aware that it was in the mail.

7       D.     Estoppel Prevents Plaintiff's Forcible Entry and Detainer Action

8       Both Plaintiff and Defendant had expressed a desire around mid to late January to end the  
9 landlord-tenant relationship. Plaintiff had threatened to file an FED action. Defendant was  
10 considering filing his own action to claim damages under the Oregon Residential Landlord-  
11 Tenant Act. Both parties contested the validity of the other's notice. Defendant, through his  
12 attorney, negotiated with Plaintiff, through Nora Barnes, to agree on a move out date for  
13 Defendants. Both parties had agreed that Defendants would vacate the residence by February 21,  
14 2003, at midnight. Both parties agreed that any defect in notice would be waived to arrive on  
15 that move out date. This agreement to waive such defect in notice constituted consideration on  
16 the part of both parties. Because Defendant felt that Plaintiff was not going to file a wrongful  
17 FED action, he decided to refrain from filing an action under the Oregon Residential Landlord-  
18 Tenant Act himself. Because of this consideration and because of Defendants' reliance on this  
19 agreement, Plaintiff's FED action should be barred until at least February 22, 2003.

20       E.     Excessive and Unreasonable Fees and Late Rent Charges

21       Plaintiff purports to charge Defendant \$25 for each day that he is delinquent in his rent  
22 payment. ORS 90.262 provides that the amount of any late charge shall not exceed a reasonable  
23 amount charged on a per day basis. \$25 a day amounts to over \$600 per month. This is clearly  
24 excessive and bears no relationship to any harm that the landlord has suffered.

25       Similarly, ORS 90.302 provides that fees for certain landlord expenses will be allowed

1 but may not be excessive. Plaintiff purports to require a fee of \$50 for each service of notice for  
2 violation of the rental agreement. He has indicated that he can charge for three such services.  
3 This \$150 fee bears no relation to the expense or effort expended by Plaintiff in his affixing two  
4 notices to the front door of the Warnocks' home and sending a notice via certified mail.  
5 Furthermore, each service of notice was invalid, as described above, so no fee should be charged  
6 at all.

7 Finally, Plaintiff purports to charge Defendant \$250 for Plaintiff's institution of this FED  
8 action above and beyond any costs or attorneys' fees. This fee, for merely filing a lawsuit, is  
9 clearly excessive and bears no relation to Plaintiff's costs.

10 F. Unlawful and Unreasonable Entry and Harassment

11 The right of a landlord to enter the premises held by a tenant is governed by ORS 90.322,  
12 which provides that a landlord may enter without consent or notice for the purposes of serving  
13 notices required or permitted under the rental agreement or applicable law, that a landlord may  
14 enter in the case of an emergency but must give tenant notice of the entry within 24 hours, that if  
15 the tenant requests repairs or maintenance in writing the landlord or his agent may enter upon  
16 demand, that the landlord may enter to show the premises at reasonable times if there is a written  
17 agreement which is supported by separate consideration and is separate from the rental  
18 agreement, if a written agreement requires the landlord to perform yard maintenance, or if the  
19 landlord provides 24 hours actual notice of his intent to enter and the tenant does not deny  
20 consent to enter. An entry that takes place outside of these parameters is an unlawful entry. An  
21 entry that takes place within these parameters but is done in an unreasonable manner is an  
22 unreasonable lawful entry. A landlord is also prohibited from making repeated demands for  
23 entry that have the effect of unreasonably harassing the tenant.

24 Plaintiff's repeated entries onto the property to do yard work absent an agreement  
25 allowing that constitutes an unlawful entry. Plaintiff's entry to show the house without making  
26

1 appointments or at times other than the times that he had made appointments for constitute  
2 unlawful entry. Plaintiff's yelling, his intoxicated behavior, his insults to Defendants' family, his  
3 leaving shrubs on the driveway and leaves in front of doors, if not unlawful, are unreasonable.  
4 Finally, Plaintiff has yelled at, insulted, and threatened to evict Defendants when they have  
5 asserted their right to a notice before Plaintiff enters the property. Plaintiff has behaved as  
6 though he is entitled to enter the property anytime he desires. This has caused great distress to  
7 Defendants' family and has had the effect of harassing them.

8           G.     Retaliatory Eviction

9           On January 18, 2003, Plaintiff arrived with a potential house buyer and Mrs. Warnock  
10 told him that he needed to provide notice before showing the house. On January 20<sup>th</sup>, Plaintiff  
11 again arrived and Mr. Warnock told him that he needed to provide notice before coming over to  
12 the house. Mr. Warnock expressed his desire to move out of the house in 30 days because of  
13 Plaintiff's behavior. On both occasions, Plaintiff became upset and, on the latter occasion,  
14 expressed his intention to sue.

15           Plaintiff then affixed his first notice of eviction in response to these expressions of  
16 Defendants' legally protected rights as tenants. A landlord may not retaliate by serving a notice  
17 to terminate the tenancy or threatening to bring an action for possession after a tenant makes any  
18 complaint that is related to the tenancy or has expressed an intent to perform any other act for the  
19 purpose of asserting, protecting or invoking the protection of any right secured to tenants. ORS  
20 90.385(1)(a)-(f). Plaintiff's action is direct response to tenants' desire to protect their rights to be  
21 left alone. The remedy for retaliatory conduct by a landlord is the remedy provided by ORS  
22 90.375, which is an amount up to two months' periodic rent or twice actual damages, whichever  
23 is greater. ORS 90.385(3).

24           ///

25           ///

26

## CONCLUSION

For the reasons described above, Plaintiff's prayer for relief should be denied and Defendants should be granted the relief prayed for.

Respectfully Submitted by:

Han T. Brown

Ian T. Brown, OSB # 01215  
The VanderMay Law Firm  
of Attorneys for Defendants

Barnes v. Warnock  
Polk County Case No. 03P1054

## CERTIFICATE OF SERVICE

6 I do hereby certify that I have served a certified copy of the foregoing DEFENDANTS'  
7 TRIAL MEMORANDUM upon the following persons or agencies on February 7, 2003, by  
8 causing a true and correct copy to be faxed to the last known facsimile number of the party listed  
9 below and by causing true and correct copies in a sealed envelope, postage prepaid, to be  
10 deposited in the U.S. Mail in Salem, Oregon, to:

Norman F. Webb  
Webb, Martinis & Hill  
1114 12<sup>th</sup> Street SE  
Salem, OR 97302  
Facsimile No.: (503) 363-2250

DATED this the 7<sup>th</sup> day of February, 2003.

Ian T. Brown  
Ian T. Brown, OSB #01215  
The VanderMay Law Firm  
of Attorneys for Defendant

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TRIAL COURT ADMINISTRATOR  
MULTNOMAH COUNTY, OREGON  
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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF POLK

FRED BARNES, )  
                  Plaintiff,     ) Case No. 03P-1054  
                  v.             ) PLAINTIFF'S TRIAL  
                  ) MEMORANDUM  
GREGORY L. WARNOCK )  
and SHELLY K. WARNOCK, )  
                  Defendants. )

INTRODUCTION

As of the time of trial, Plaintiffs were willing to accept Defendants' rent for the month of January and dismiss this FED. Defendants wish to move out by February 21<sup>st</sup>, a date acceptable to the Plaintiff. Thus, it does not appear that the parties have any dispute worthy of the Court's assistance.

Nevertheless, Defendants insisted on a trial in order to "clean the defendants' name" and try and recover attorney fees. The Court should reject

Page 1 - Plaintiff's Trial Memorandum

1 the Defendants' claims as baseless and in bad faith. Plaintiff should be  
2 awarded his attorney fees and costs.

## FACTS

4 The tenancy in this case started as a potential sale. Plaintiff Fred  
5 Barnes is a Realtor. He and his wife owned property at 3062 Timothy Drive  
6 NW, Salem Oregon 97304. It was their long time family home.

7 In the summer of 2001 Plaintiff was trying to sell the property. Mr.  
8 Barnes conducted numerous open houses. He met the Warnocks at one of  
9 those open houses.

10       Initially, the Warnocks wanted to purchase the property. They told the  
11 Barnes' that they wanted to move to a new house and that they were currently  
12 living with other family members. They explained that they could not  
13 purchase the property immediately, but would have the funds available to  
14 purchase within a few months.

15 The Barnes' agreed to lease the property to the Warnocks for a short  
16 term and pursuant to a lease. The Warnocks were also granted an option to  
17 purchase the property for \$260,000. The lease consists of two lease  
18 documents provided to the Court as Plaintiff's Exhibits 2 and 3. The lease is  
19 straight forward. It calls for the Defendants to maintain the premises,  
20 including the yard. Mr. Warnock represented that one of his son's enjoyed  
21 yard work and that they looked forward to caring for the property.

22 The leases also included an option to purchase the property for  
23 \$260,000. that was to be executed no later than March 21, 2002.

1        Unfortunately, Warnocks were never in a position to purchase the  
2 property. They have extensive credit problems that were not disclosed at the  
3 time they executed the option. However, Plaintiff agreed to continue renting  
4 the property to them on a month-to-month basis.

5        In June 2002 Mr. Barnes wrote to the Warnocks and informed them  
6 that he needed to sell the house. Barnes explained that he would be happy to  
7 sell to the Warnocks, and that if the property did not sell by the ensuing fall,  
8 that they would simply continue renting to the Warnocks. A copy of Barnes'  
9 letter is presented to the Court as Plaintiff's Exhibit 3. In it he expressly gives  
10 notice that he will need to have open houses and repair the yard, due to the  
11 Defendants' failure to maintain the premises. The testimony will reveal that  
12 Warnock agreed to cooperate.

13        Unfortunately, Warnock never followed through on his promise. The  
14 Warnocks made things very difficult on the Barnes'. They repeatedly made  
15 showing the property extremely difficult. They failed to maintain the premises.  
16 The yard went into a state of disrepair, making the property less saleable.

17        Barnes eventually could no longer overlook the condition of the property  
18 and provided the Warnocks with a notice of termination of tenancy. A copy of  
19 the initial notice is provided to the Court as Plaintiff's Exhibit 4. A series of  
20 discussions ensued between the Warnocks' lawyer and the Barnes'.  
21 Eventually, Warnock indicated a willingness to move out by the date called for  
22 in the notice.

23        Unfortunately, the Warnocks did not pay their rent on time. Barnes'  
24 responded by issuing a 72-hour notice for non-payment of rent. As it turns  
Page 3 - Plaintiff's Trial Memorandum  
25

1 out, Warnocks' payment was sent to the wrong address. It eventually arrived,  
2 but after an FED was filed. Despite the parties' previous discussions, the  
3 Defendants insisted on going forward with a series of counterclaims. As  
4 discussed below, none of these counterclaims has merit. Instead, the  
5 counterclaims appear to be offered in bad faith and only to provide a basis for  
6 Defendants' attorneys to try and collect fees.

7 **DISCUSSION**

8 1. Unlawful and Unreasonable Lawful Entry and Harassment

9 Defendants list a series of events they claim constitute unlawful and  
10 unreasonable lawful entry and harassment. However, a review of the  
11 allegations reveals that they stem primarily from Plaintiff's attempts to show  
12 the house to a perspective purchaser, maintain the exterior of the house and  
13 perform yard maintenance, despite Defendants' obligation to do so. In short,  
14 the Defendants are complaining that Plaintiff harassed them by doing their  
15 chores for them. Defendants' additional allegations of entering the property  
16 without notice or consent are simply false. The evidence will show that there  
17 were no unlawful entries. There were no unreasonable entries. There has  
18 been no harassment.

19 The rules regarding a landlord's access to premises are found in ORS  
20 90.322. That statute provides that a landlord may enter into a tenant's  
21 dwelling unit or any portion of the premises to make necessary repairs and  
22 improvements with 24-hour actual notice. ORS 90.322(1)(f). Actual notice can  
23 be provided either in writing or verbally given personally to the tenant or left on  
24 the tenant's telephone answering machine. See ORS 90.150(1). Once a

25 Page 4 – Plaintiff's Trial Memorandum

1 landlord gives notice, that notice is effective for multiple days until the repairs  
2 or maintenance is completed. In this case, the evidence will show that Plaintiff  
3 never entered the dwelling without providing advance notice to the tenant.  
4 Moreover, on other occasions, the tenant waived any requirement or  
5 compliance with the notice provisions by allowing the landlord to enter the  
6 premises.

7 2. Retaliation

8 Finally, Defendants claim that the Plaintiff issued two notices of  
9 termination in retaliation for Defendants' insistence that Plaintiff provide  
10 notice before going onto the premises to do yard work or show the house.  
11 Plaintiff respectfully submits that this defense makes no sense.

12 First, ORS 90.390 clearly provides that retaliation is not a defense for an  
13 FED based on the tenant's failure to pay rent. Second, according to Plaintiff's  
14 own pleadings, Plaintiff began complaining about the need to give notice as  
15 early as May of 2002. Yet, the alleged retaliatory eviction notice is not provided  
16 until December of 2002. Finally, the evidence will clearly demonstrate that the  
17 30-day eviction notice was not retaliatory, and was in fact based on the

18 / / / /

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21

22

23

24

25 Page 5 – Plaintiff's Trial Memorandum

1 Defendants' repeated and extensive violations of the contract, and  
2 deterioration of the premises.

3 DATED this 10th day of February, 2003.

4 WEBB, MARTINIS & HILL

5 By:   
6 Norman R. Hill, OSB #94340  
7 Of Attorneys for Plaintiff  
8 1114 - 12th Street SE  
9 Salem, OR 97302  
10 (503) 363-9264

**CERTIFICATE OF SERVICE**

STATE OF OREGON )  
 ) ss.  
County of Marion )

I, Norman R. Hill, hereby certify that I am one of the attorneys for Plaintiff in this matter; that I served the within and foregoing Plaintiff's Trial Memorandum on the following attorney at his last-known address, *to-wit*:

9 Ian T. Brown  
10 The VanderMay Law Firm  
11 Attorneys at Law  
698 12<sup>th</sup> Street SE, Suite 240  
Salem OR 97301

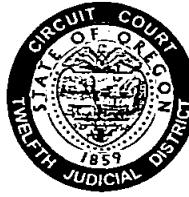
12 by hand delivering a true and correct copy thereof, duly certified to be such by  
13 me, in a sealed envelope, correctly addressed with postage affixed and fully  
14 prepaid, and depositing the same in the U.S. Post Office at Salem, Marion  
15 County, Oregon, on the date stated below. Said Attorney resides or has his  
16 office at said address. The singular includes the plural.

I certify that I reside and have my office in Salem, Marion County, Oregon.

Dated this 10th day of February, 2003.

WEBB, MARTINIS & HILL

By:   
Norman R. Hill, OSB #94030  
Of Attorneys for Plaintiff



**THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE TWELFTH JUDICIAL DISTRICT**

WILLIAM M. HORNER  
CIRCUIT JUDGE

ROOM 301  
POLK COUNTY COURTHOUSE  
DALLAS, OREGON 97338-3178

03 FEB 21 12: 23  
TRIAL COURT ADMINISTRATOR  
ENTERED BY  
FIL  
POLK COUNTY, OREGON  
PHONE - 503-623-1776  
FAX - 503-623-6614  
TDD - 503-623-0700

21 February 2003

Norman R. Hill  
1114 12<sup>th</sup> Street SE  
Salem, OR 97302

Ian Smith  
698 12<sup>th</sup> Street SE, Suite 240  
Salem, OR 97301

Re: FRED BARNES v. GREGORY L/SHELLY K. WARNOCK, 02P-1054

Dear Counselors:

A FED trial with counterclaims was heard by me on February 10, 2003 in which the two of you participated.

Plaintiff, pro se, filed the FED complaint. At the first appearance, the tenants appeared with their attorney. The matter was continued to allow the landlord to retain the services of an attorney, which he did.

The complaint listed two bases for the eviction - a 72 hour notice for failure to pay rent and a 30-day notice. At trial counsel withdrew pursuing the 30-day notice claim. In fact the 30-days had not run on the date of filing the complaint and, for that matter, on the day of trial.

The complaint was defective because it cannot legally contain two claims on one complaint.

Even if one was to ignore the 30 day notice claim, the remaining notice was defective. The lease allowed for notices to be by personal delivery, first class mail, or first class mail and attachment. The landlord chose to mail and attach. The notice that was mailed, in ignorance of ORS 90.155[2], did not extend by an additional three days to pay the claimed rent and the notice did not so state. This is a fatal procedural defect dooming the FED action. It shall be dismissed on said procedural grounds.

One of the counterclaims asks for an injunction in their prayer, but do not allege a claim for the same. It shall not be granted.

They also seek damages for alleged retaliatory action by the landlord. The triggering act

by the tenant is said to be their threat to give a thirty day notice to move out. One of the notices is an attempted 30 day notice which hardly can be labeled as 'retaliatory', since it is merely duplicative of tenant's action [Exhibit 104]. This claim is denied.

The last area is harassing acts involving frequent visits to the rental property with little or no advance warning and at disruptive hours allegedly to perform yard work.

The lease, at item #10, makes the tenant responsible for the lawn, shrubs and grounds. The remedy for failure to so comply is specific: it shall result in the tenant being charged for necessary work.

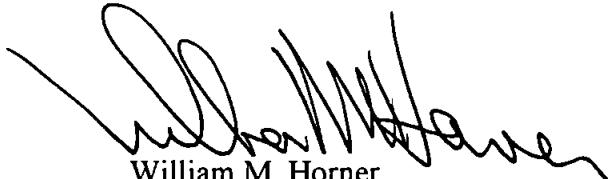
In spite of that, Mr. Barnes unilaterally decided that he would do the work himself. The tenants acquiesced. This arrangement went on from last summer to this year's Martin Luther King Day. Although both sides may have been internally chuffed at this arrangement, neither side took any steps to remedy it. Now that the rift between the two sides is irreconcilable, each side brings up 'old wounds'.

The photos of the leaves left in the middle of the entrance to the house is illustrative of how bad things had digressed between landlord and tenant.

Showing up earlier than the time agreed upon and entering the house with potential buyers and yelling 'HELLO' or whatever is not reasonable. At times, the 'permissive' reason to be on the property was to do yard work, not to peer into the house on Ms. Warnock.

I am awarding judgment in favor of tenant's for \$1,200.00, one months rent for unreasonable entry.

A copy of the judgment is enclosed.



William M. Horner  
Circuit Court Judge

IN THE CIRCUIT COURT FOR THE STATE OF OREGON  
FOR POLK COUNTY

FILED

POLK COUNTY OREGON  
03 Feb. 21 PM 12:23

JRT ADM 135 ATOR

FRED BARNES )  
Plaintiff (landlord), )  
vs. )  
GREGORY L WARNOCK )  
SHELLY K WARNOCK )  
Defendant (tenant). )

Case No. 03P1054 tried By AJ

FED JUDGMENT  
 FED ORDER

A hearing was held on this date in an action for Forcible Entry and Unlawful Detainer  
upon premises described as: 3062 TIMOTHY DR. NW, SALEM, OR 97304

Plaintiff  did/  did not appear; Defendant  did/  did not appear.

**JUDGMENT**

Default judgment against defendant. Plaintiff shall have restitution of the above described  
premises plus judgment against defendant for costs and disbursements of \$ \_\_\_\_\_.

Judgment against defendant after trial. Plaintiff shall have restitution of the above described  
premises plus judgment against defendant for costs and disbursements of \$ \_\_\_\_\_.

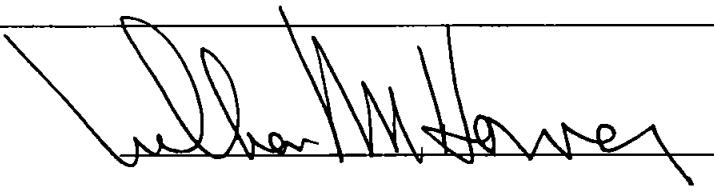
Judgment against plaintiff after trial. Defendant shall have judgment for costs and  
disbursements of \$ 1,200 *for \$1,200 on their counterclaim*

Stipulated agreement: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dismissal  with/  without prejudice.

**ORDER**

Date FEB. 21, 2003

  
Circuit Court Judge

FILED  
CLERK'S OFFICE, U.S. DISTRICT COURT  
PORTLAND, OREGON

03 MAR - 3 AH 11:21

TRIAL COURT ADMINISTRATOR  
ENTERED BY

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF POLK

9 FRED BARNES, ) Case No. 03P-1054  
10 Plaintiff, )  
11 and ) STATEMENT AND AFFIDAVIT  
12 GREGORY L. WARNOCK, ) FOR COSTS AND DISBURSEMENTS  
and SHELLY K. WARNOCK )  
13 Defendants. )  
14

15 The undersigned attorney represents to the Court, under penalties of perjury, the following  
16 facts offered in support of an award of reasonable and necessary costs and disbursements are true:

## COSTS ADVANCED and INCURRED

	<u>Item</u>	<u>Amount</u>
18		
19	(A) Postage:	\$ 7.39
20	(B) Photocopies:	\$40.30 (20 cents/page)
21	(C) Facsimile	\$30.00 \$2 - 1 <sup>st</sup> page; \$1 - ea. additional page
22	(D) Filing Fees	\$83.00
23	(E) Long Distance Telephone	\$ _____
24	(F) Service of Process	\$ _____
	<hr/>	
	TOTAL	\$160.69

**STATEMENT AND AFFIDAVIT FOR  
COSTS AND DISBURSEMENTS**

The VanderMay Law Firm  
698 12<sup>th</sup> St., S.E., Ste. 240  
Salem, Oregon 97301  
(503) 588-8053

1 Based on the above, Defendant is entitled to an award of costs and disbursement in the  
2 amount of \$77.69.

3 DATED this the 23 day of February, 2003.

4  
5 Ian T. B.

6 Ian T. Brown, OSB # 01215  
7 The VanderMay Law Firm  
8 of Attorneys for Defendants

9 SUBSCRIBED AND SWORN to before me on this the 28 day of February, 2003.

10  
11 Cynthia Flores.  
12 Notary Public for Oregon  
13 My Commission Expires: 2-25-05



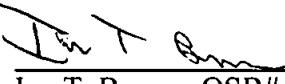
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2 Barnes and Warnock  
3 Polk County Case No. 03P-1054  
4

5 CERTIFICATE OF SERVICE - MAILING

6 I do hereby certify that I have served the foregoing STATEMENT AND AFFIDAVIT  
7 FOR COSTS AND DISBURSEMENTS and SUPPLEMENTAL MONEY JUDGMENT  
8 PURSUANT TO ORCP 68 AND 70A upon the following person on the 28th day of February,  
9 2003, through regular mail with postage prepaid, a true and correct copy, in a sealed envelope,  
10 and depositing the same in the United States Mail, at Salem, Oregon to:

11  
12 Norman F. Webb  
13 Webb, Martinis & Hill  
14 1114 12th Street SE  
15 Salem, OR 97302

16  
17 DATED this the 28th day of February, 2003.

18   
19 Ian T. Brown, OSB# 01215  
20 The VanderMay Law Firm  
21 of Attorneys for Defendants

22  
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1 CERTIFICATE OF SERVICE

The VanderMay Law Firm  
698 12<sup>th</sup> Street SE, Ste 240  
Salem, Oregon 97301  
(503)588-8053

FILED  
CLACKAMAS COUNTY, OREGON

03 MAR -4 AM 11:12

TRIAL COURT ADMINISTRATOR  
ENTERED BY SM

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF POLK

FRED BARNES, ) Case No. 03P-1054  
Plaintiff, )  
and ) AMENDED STATEMENT AND AFFIDAVIT  
GREGORY L. WARNOCK, ) FOR COSTS AND DISBURSEMENTS  
and SHELLY K. WARNOCK )  
Defendants. )

The undersigned attorney represents to the Court, under penalties of perjury, the following facts offered in support of an award of reasonable and necessary costs and disbursements are true:

COSTS ADVANCED and INCURRED

<u>Item</u>	<u>Amount</u>
(A) Postage:	\$ 7.39
(B) Photocopies:	\$40.30 (20 cents/page)
(C) Facsimile	\$30.00 \$2 - 1 <sup>st</sup> page; \$1 - ea. additional page
(D) Filing Fees	\$83.00
(E) Long Distance Telephone	\$ ____
(F) Service of Process	\$ ____
<b>TOTAL</b>	<b>\$160.69</b>

AMENDED STATEMENT AND AFFIDAVIT FOR  
COSTS AND DISBURSEMENTS

The VanderMay Law Firm  
698 12<sup>th</sup> St., S.E., Ste. 240  
Salem, Oregon 97301  
(503) 588-8053

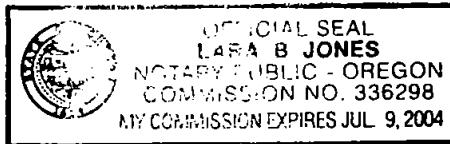
1 Based on the above, Defendant is entitled to an award of costs and disbursement in the  
2 amount of \$160.69.

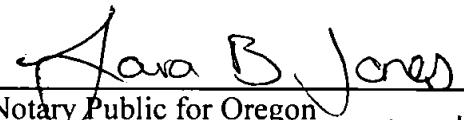
3 DATED this the 3<sup>rd</sup> day of March, 2003.

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5

6 Ian T. Brown, OSB # 01215  
7 The VanderMay Law Firm  
8 of Attorneys for Defendants

9 SUBSCRIBED AND SWORN to before me on this the 3<sup>rd</sup> day of March, 2003.  
10



10   
11 Notary Public for Oregon  
12 My Commission Expires: 7-9-04

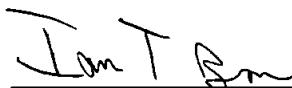
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Polk County Case No. 03P-1054

CERTIFICATE OF SERVICE - MAILING

I do hereby certify that I have served the foregoing AMENDED STATEMENT AND  
AFFIDAVIT FOR COSTS AND DISBURSEMENTS and SUPPLEMENTAL MONEY  
JUDGMENT PURSUANT TO ORCP 68 AND 70A upon the following person on the 3 day  
of March, 2003, through regular mail with postage prepaid, a true and correct copy, in a sealed  
envelope, and depositing the same in the United States Mail, at Salem, Oregon to:

Norman R. Hill  
Attorney at Law  
1114 12th Street SE  
Salem, OR 97302

DATED this the 3 day of March, 2003.

  
\_\_\_\_\_  
Ian T. Brown, OSB# 01215  
The VanderMay Law Firm  
of Attorneys for Defendants

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03 MAR 12 PM 12:02

TRIAL COURT ADMINISTRATOR  
ENTERED BY *[Signature]*

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF POLK

FRED BARNES, ) Case No. 03P-1054  
Plaintiff, )  
v. ) SUPPLEMENTAL MONEY JUDGMENT  
GREGORY L. WARNOCK, ) PURSUANT TO ORCP 68 AND 70A  
and SHELLY K. WARNOCK, )  
Defendants. )  
\_\_\_\_\_  
)

THIS MATTER having come before this Honorable Court on the motion of the Defendants, Gregory L. Warnock and Shelly K. Warnock, by and through their counsel of record, Ian T. Brown and The VanderMay Law Firm, for the entry of a supplemental judgment awarding costs and disbursements to Defendants. The Court having been presented with this form of Supplemental Money Judgment Pursuant to ORCP 68 and ORCP 70A, having reviewed the records and documents on file herein, and being fully advised in the premises makes the following findings:

On February 10, 2003, this case came to trial and after trial, judgment was awarded against Plaintiff for \$1,200.00 on their counterclaim. Defendants are the prevailing parties in this case.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants shall be awarded costs and disbursements in the amount of \$\_\_\_\_\_, pursuant to ORCP 68 and 70A.

SUPPLEMENTAL MONEY JUDGMENT PURSUANT TO ORCP 68 AND 70A

Judgment Creditor: Gregory L. Warnock and Shelly K. Warnock  
P.O. Box 8043  
Salem, Oregon 97303

SUPPLEMENTAL MONEY JUDGMENT  
PURSUANT TO ORCP 68 AND 70A

The VanderMay Law Firm  
698 12<sup>th</sup> Street SE, Ste 240  
Salem, OR 97301  
(503)588-8053

*2/12/03* *AT/IN*

1 Judgment Creditor's Attorney:

Ian T. Brown, OSB # 01215  
The VanderMay Law Firm  
698 12<sup>th</sup> Street S.E., Suite 240  
Salem, Oregon 97301

2 Judgment Debtor:

Fred Barnes  
P.O. Box 6020  
Salem, Oregon 97304

3 Judgment Debtor's Attorney:

Norman F. Webb  
Webb, Martinis & Hill  
1114 12<sup>th</sup> St. SE  
Salem, Oregon 97302

4 Judgment Amount:

Costs and Disbursements: \$ 160.69

5 Prejudgment Interest: None

6 Postjudgment Interest: Nine percent (9%) per annum simple interest on judgment  
amount of \$ \_\_\_\_\_ from the date of judgment until paid.

7 IT IS SO ORDERED, ADJUDGED, AND DECREED on this the 12 day of

8 March, 2003.

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Circuit Court Judge

Respectfully submitted by:

Ian T. Brown, OSB # 01215  
The VanderMay Law Firm  
of Attorneys for Defendants

2 SUPPLEMENTAL MONEY JUDGMENT  
PURSUANT TO ORCP 68 AND 70A

The VanderMay Law Firm  
698 12<sup>th</sup> Street SE, Ste 240  
Salem, OR 97301  
(503)588-8053

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POLK COUNTY OREGON  
03 APR 23 PM 12:32  
TRIAL COURT ADMINISTRATOR  
ENTERED BY *[Signature]*

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF POLK

FRED BARNES, ) Case No. 03P-1054  
Plaintiff, )  
v. ) AMENDED FED JUDGMENT  
GREGORY L. WARNOCK, )  
and SHELLY K. WARNOCK, )  
Defendants. )

THIS MATTER having come before this Honorable Court on the motion of the Defendants, Gregory L. Warnock and Shelly K. Warnock, by and through their counsel of record, Tammy R. Schilling and The VanderMay Law Firm, for the entry of an amended judgment awarding costs and disbursements to Defendants. The Court having been presented with this form of Amended FED Judgment and Money Judgment pursuant to ORCP 68 and ORCP 70A, having reviewed the records and documents on file herein, and being fully advised in the premises makes the following findings:

On February 10, 2003, this case came to trial and after trial, judgment was awarded against Plaintiff for \$1,200.00 on their counterclaim. *See* Ex. A, Court opinion letter dated February 21, 2003, attached hereto and incorporated herein in its entirety. Defendants are the prevailing parties in this case.

Following Defendant's statement of costs and disbursements, the Court awarded \$160.69 on March 12, 2003.

1 AMENDED FED JUDGMENT

1 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants shall be  
2 awarded \$1,200.00 for unreasonable entry together with an award for costs and disbursements in  
3 the amount of \$160.69, pursuant to ORCP 68 and 70A.

4 SUPPLEMENTAL MONEY JUDGMENT PURSUANT TO ORCP 68 AND 70A

5 Judgment Creditor: Gregory L. Warnock and Shelly K. Warnock  
6 P.O. Box 8043  
Salem, Oregon 97303

7 Judgment Creditor's Attorney: Tammy R. Schilling, OSB # 00098  
8 The VanderMay Law Firm  
698 12<sup>th</sup> Street S.E., Suite 240  
Salem, Oregon 97301

9 Judgment Debtor: Fred Barnes  
10 P.O. Box 6020  
Salem, Oregon 97304

11 Judgment Debtor's Attorney: Norman F. Webb  
12 Webb, Martinis & Hill  
13 1114 12<sup>th</sup> St. SE  
Salem, Oregon 97302

14 Judgment Amount:

15 Award for Counterclaim: \$1,200.00

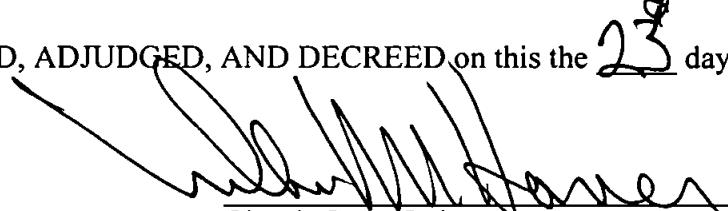
16 Costs and Disbursements: \$160.69

17 Prejudgment Interest: None

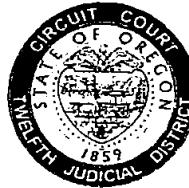
18 Postjudgment Interest: Nine percent (9%) per annum simple interest on judgment  
amount of \$1,360.69 from the date of judgment until paid.

19 IT IS SO ORDERED, ADJUDGED, AND DECREED on this the 23 day of

20 April, 2003.

21   
Circuit Court Judge

22 Respectfully submitted by:  
23 Tammy R. Schilling, OSB # 00098  
The VanderMay Law Firm  
of Attorneys for Defendants



**THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE TWELFTH JUDICIAL DISTRICT**

WILLIAM M. HORNER  
CIRCUIT JUDGE

ROOM 301  
POLK COUNTY COURTHOUSE  
DALLAS, OREGON 97338-3178

PHONE - 503-831-1776  
FAX - 503-623-6614  
TDD - 503-623-0700

21 February 2003

Norman R. Hill  
1114 12<sup>th</sup> Street SE  
Salem, OR 97302

Ian Smith  
698 12<sup>th</sup> Street SE, Suite 240  
Salem, OR 97301

Re: FRED BARNES v. GREGORY L/SHELLY K. WARNOCK, 02P-1054

Dear Counselors:

A FED trial with counterclaims was heard by me on February 10, 2003 in which the two of you participated.

Plaintiff, pro se, filed the FED complaint. At the first appearance, the tenants appeared with their attorney. The matter was continued to allow the landlord to retain the services of an attorney, which he did.

The complaint listed two bases for the eviction - a 72 hour notice for failure to pay rent and a 30-day notice. At trial counsel withdrew pursuing the 30-day notice claim. In fact the 30-days had not run on the date of filing the complaint and, for that matter, on the day of trial.

The complaint was defective because it cannot legally contain two claims on one complaint.

Even if one was to ignore the 30 day notice claim, the remaining notice was defective. The lease allowed for notices to be by personal delivery, first class mail, or first class mail and attachment. The landlord chose to mail and attach. The notice that was mailed, in ignorance of ORS 90.155[2], did not extend by an additional three days to pay the claimed rent and the notice did not so state. This is a fatal procedural defect dooming the FED action. It shall be dismissed on said procedural grounds.

One of the counterclaims asks for an injunction in their prayer, but do not allege a claim for the same. It shall not be granted.

They also seek damages for alleged retaliatory action by the landlord. The triggering act

EXHIBIT

tabber

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by the tenant is said to be their threat to give a thirty day notice to move out. One of the notices is an attempted 30 day notice which hardly can be labeled as 'retaliatory', since it is merely duplicative of tenant's action [Exhibit 104]. This claim is denied.

The last area is harassing acts involving frequent visits to the rental property with little or no advance warning and at disruptive hours allegedly to perform yard work.

The lease, at item #10, makes the tenant responsible for the lawn, shrubs and grounds. The remedy for failure to so comply is specific: it shall result in the tenant being charged for necessary work.

In spite of that, Mr. Barnes unilaterally decided that he would do the work himself. The tenants acquiesced. This arrangement went on from last summer to this year's Martin Luther King Day. Although both sides may have been internally chaffed at this arrangement, neither side took any steps to remedy it. Now that the rift between the two sides is irreconcilable, each side brings up 'old wounds'.

The photos of the leaves left in the middle of the entrance to the house is illustrative of how bad things had digressed between landlord and tenant.

Showing up earlier than the time agreed upon and entering the house with potential buyers and yelling 'HELLO' or whatever is not reasonable. At times, the 'permissive' reason to be on the property was to do yard work, not to peer into the house on Ms. Warnock.

I am awarding judgment in favor of tenant's for \$1,200.00, one months rent for unreasonable entry.

A copy of the judgment is enclosed.



William M. Horner  
Circuit Court Judge

EXHIBIT

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2062

1  
2 Barnes and Warnock  
3 Polk County Case No. 03P-1054  
4

5 CERTIFICATE OF SERVICE - MAILING  
6

7 I do hereby certify that I have served the foregoing AMENDED FED JUDGMENT upon  
8 the following person(s) on the 8th day of April, 2003, through regular mail with postage  
9 prepaid, a true and correct copy, in a sealed envelope, and depositing the same in the United  
10 States Mail, at Salem, Oregon to:

11 Norman F. Webb  
12 Webb, Martinis & Hill  
13 1114 12<sup>th</sup> Street SE  
14 Salem, Oregon 97302

15 DATED this the 8th day of April, 2003.

16   
17 Tammy R. Schilling OSB# 00098  
18 The VanderMay Law Firm  
19 of Attorneys for Defendants  
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1 CERTIFICATE OF SERVICE - MAILING

The VanderMay Law Firm  
698 12<sup>th</sup> Street SE, Ste 240  
Salem, Oregon 97301  
(503)588-8053

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POLK COUNTY OREGON

03 APR 30 AM 11:35

TRIAL COURT ADMINISTRATOR  
ENTERED BY *[Signature]*

IN THE CIRCUIT COURT FOR THE STATE OF OREGON  
FOR THE COUNTY OF POLK

FRED BARNES, ) Case No. 03P-1054  
Plaintiff, )  
and ) SATISFACTION OF JUDGMENT  
GREGORY L. WARNOCK, )  
and SHELLY K. WARNOCK, )  
Defendants. )

The undersigned hereby acknowledges full satisfaction in the amount of \$1,360.69 for  
judgment entered in this case in favor of Defendant's and against Plaintiff.

DATED this the 18<sup>th</sup> day of April, 2003.

*[Signature]*  
Gregory L. Warnock, Defendant

SUBSCRIBED AND SWORN to before me on this the 18<sup>th</sup> day of April, 2003.



*Angela L Endres*  
My Commission Expires: 10-6-03

*nka Angela L. Hoover*

The VanderMay Law Firm  
698 12<sup>th</sup> Street SE, Suite 240  
Salem, Oregon 97301  
(503) 588-8053

1 SATISFACTION OF JUDGMENT

1 DATED this the 22 day of April, 2003.

2 Shelly K. Warnock  
3 Shelly K. Warnock, Defendant

4 SUBSCRIBED AND SWORN to before me on this the 22<sup>nd</sup> day of April, 2003.

5 Cynthia Flores  
6 Notary Public for Oregon  
7 My Commission Expires: 2-25-05



8 Submitted by:  
9 Tammy R. Schilling, OSB # 00098  
10 The VanderMay Law Firm  
11 of Attorneys for Defendants

26 2 SATISFACTION OF JUDGMENT

K:\worddoc\civil\client\warnock, g 2604-01\warnock satisfaction of judgment.wpdcl 4-18-03

The VanderMay Law Firm  
698 12<sup>th</sup> Street SE, Suite 240  
Salem, Oregon 97301  
(503) 588-8053

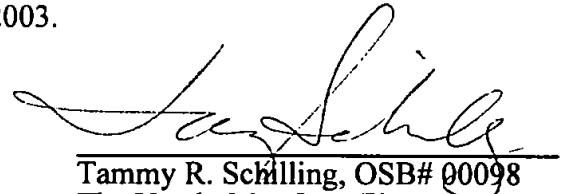
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2 Barnes and Warnock  
3 Polk County Case No. 03P-1054  
4

5 CERTIFICATE OF SERVICE - MAILING  
6

7 I do hereby certify that I have served the foregoing SATISFACTION OF JUDGMENT  
8 upon the following person(s) on the 29 day of April, 2003, through regular mail with postage  
9 prepaid, a true and correct copy, in a sealed envelope, and depositing the same in the United  
10 States Mail, at Salem, Oregon to:

11 Norman F. Webb  
12 Webb, Martinis & Hill  
13 1114 12<sup>th</sup> Street SE  
14 Salem, Oregon 97302

15 DATED this the 29 day of April, 2003.

16   
17 Tammy R. Schilling, OSB# 00098  
18 The VanderMay Law Firm  
19 of Attorneys for Defendants  
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The VanderMay Law Firm  
698 12<sup>th</sup> Street SE, Ste 240  
Salem, Oregon 97301  
(503)588-8053

1 CERTIFICATE OF SERVICE - MAILING